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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
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www.uspto.gov

JOHN S MORTIMER
WOOD PHILLIPS VANSANTEN CLARK & MORTIMER
500 WEST MADISON STREET
SUITE 3800
CHICAGO IL 60661

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OFFICE OF PETITIONS

In re Application of
Nagata et al.

Application No. 09/008,675

Filed: January 16, 1998

For: METHOD AND SYSTEM FOR TREATING
A POWER TRANSMISSION BELT/BELT
SLEEVE

: Decision on
: Petition to Correct
: Patent Term Extension

In response to the "Petition Under 37 CFR 1.181" to correct the patent term extension in the Notice of Allowance, which was filed on February 9, 2004, the above-identified application has been forwarded to the undersigned for review of the extension information to be printed on the face of the patent. See 35 U.S.C. § 154(b)¹ and 37 C.F.R. § 1.701. The Notice of Allowance and Issue Fee Due incorrectly indicated that the patent to issue from the application 09/008,675 is eligible for a 0 day extension, where a 661 day extension is due.

The petition is GRANTED.

Issue of the above-identified application was delayed due to proceedings before the Board of Appeals and Interferences, and the above-identified application has been allowed pursuant to a favorable decision by the Board.

A Notice of Appeal was filed in the above-identified application on April 21, 2000. On November 7, 2002, the Board of Appeals and Interferences affirmed-in-part the decision of the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal of an adverse decision of patentability, the patent to issue from the application is entitled to an extension of the patent term. The period of delay in the above-identified application is the period beginning on April 21, 2000, the date that the Notice of Appeal was filed, and ending on November 7, 2002, the date of the final decision in favor of the applicant. Three years after the earliest effective filing date of the application is January 16, 2001. Accordingly, the period of extension is required to be reduced pursuant to 37 CFR 1.701(d)(1). As a result, the period of extension is correctly indicated as 661 days, the period from January 16, 2001 to November 7, 2002 including the beginning and end dates.

¹35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the existing patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

After mailing of this decision, the above-identified application will be returned to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by **661 days**.

Petitioner's deposit account has not been charged a petition fee.

Telephone inquiries with regard to this communication should be directed to Mark Polutta at (703) 308-8122.



Mark Polutta
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy